

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT COURT TEXAS
SAN ANTONIO DIVISION

SINA MOGHTADER,
PLAINTIFF,

v.

NATIONAL BOARD OF
MEDICAL EXAMINERS,
DEFENDANT.

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CAUSE NO. 5:17-CV-01216-FB

PLAINTIFF'S RULE 59 MOTION FOR NEW TRIAL

To the Honorable United States District Court Judge:

Plaintiff files his Rule 59 Motion for New Trial and respectfully states as follows:

1. The first reason the Court recited in granting defendant's motion to dismiss was that plaintiff lacked jurisdiction because he is not currently enrolled in a medical school. The NBME requires that students be enrolled in a medical school to take the Step Exams.

2. Plaintiff was dismissed from his medical school because that school, like all medical schools, require students to pass the respective Step Exams within a specified period of time. Plaintiff did not meet this requirement.

3. Plaintiff did not meet the foregoing school requirement because the NBME illegally refused to grant plaintiff the reasonable accommodations to which he was entitled. Had plaintiff been accommodated by the NBME, accommodations to which he was entitled, he would have passed the various Step Exams and still be enrolled in medical school and we would not be in this Court.

4. It is patently unfair for the NBME to illegally withhold reasonable accommodations

such that a medical student cannot pass the Step Exams, resulting in the student being dismissed, and then pleading lack of jurisdiction. In other words, the NBME can deny all requests for accommodations, sit back and wait for the time to expire resulting in a student's dismissal from medical school, and then walk into court arguing lack of jurisdiction.

5. It is unfair for the NBME to wield such tactical and strategical authority. If this practice is allowed to happen, the NBME can effectively avoid all liability under the ADA by simply denying all requests for accommodations and sitting back waiting for the inevitable dismissal of the students from medical school. Such a practice perverts and neuters the protections supposedly provided by the ADA.

6. Plaintiff asks the Court to reconsider its dismissal to allow plaintiff the opportunity to conduct discovery regarding the NBME's practice of wholesale denials of reasonable accommodations. Without such relief, the NBME will continue to operate without any effective judicial oversight and no recourse for those aggrieved by such illegal practices.

7. The second reason for the Court's dismissal was that plaintiff's complaint stated his disabilities "as compared to most people of similar educational background." That comparison was in error and plaintiff would like to amend to compare his disabilities to "most people," not just people of similar educational background. The evidence that will be adduced in discovery will satisfy this requirement and plaintiff is more than willing to plead with greater specificity.

8. If this Court does not grant a new trial and let plaintiff proceed with discovery, the ADA will be rendered toothless with respect to the NBME. The NBME will be allowed to continue the practice of denying reasonable accommodations, waiting for the particular student to be

dismissed from medical school, and then coming into federal court and plead jurisdiction. That simply isn't fair.

9. For these reasons, plaintiff respectfully asks the Court to grant a new trial and for such other relief to which plaintiff may be entitled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served by ECF and Email on October 9, 2018, to opposing counsel, as follows:

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